

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

VINCENT TRAN,

07-CV-953-BR

Plaintiff,

OPINION AND ORDER

v.

TYCO ELECTRONICS,
CORPORATION, A foreign
business corporation
registered in Pennsylvania,
DBA TYCO ELECTRONICS
PRECISION INTERCONNECT,

Defendant.

VINCENT TRAN
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Plaintiff, *Pro Se*

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BROWN, Judge.

This matter comes before the Court on Defendant Tyco Electronics Corporation's Bill of Costs (#79). For the reasons that follow, the Court awards costs to Defendant in the amount of **\$1,760.50.**

BACKGROUND

On June 28, 2007, Plaintiff filed a Complaint in this action in which he alleged Defendant violated Oregon Revised Statute § 659A.030(1)(f) when it retaliated against Plaintiff for resisting unlawful discrimination based on his race, age, or national origin.

On July 11, 2007, Plaintiff filed an Amended Complaint in which he alleged Defendant (1) violated Oregon Revised Statute § 659A.030(1)(f) when it retaliated against Plaintiff for resisting discriminatory treatment based on his race, age, or national origin and (2) violated Title VII, 42 U.S.C. §§ 2000e-2 and 2000e-3, by retaliating against Plaintiff for filing a BOLI complaint.

On September 28, 2007, Plaintiff filed a second Amended Complaint in which he alleged Defendant (1) discriminated against Plaintiff on the basis of his race, color, and/or national origin in violation of Title VII, 42 U.S.C. § 2000e-2(m); (2) discriminated against Plaintiff on the basis of his race in violation of 42 U.S.C. § 1981; (3) discriminated against Plaintiff on the basis of his race, color, and/or national origin in violation of Oregon Revised Statute § 659A.030; (4) intentionally and negligently inflicted emotional distress; (5) committed fraud; and (6) violated Title VII, 42 U.S.C. § 2000e-2 and § 2000e-3, by retaliating against Plaintiff because he filed a BOLI complaint.

On January 22, 2008, the Court issued an Opinion and Order in which it granted Defendant's Motion to Dismiss Plaintiff's claims for intentional and negligent infliction of emotional distress and fraud.

On February 14, 2008, Plaintiff filed a third Amended Complaint in this action in which he alleges Defendant discriminated against him on the basis of his national origin in violation of Title VII, 42 U.S.C. § 2000e-2, 42 U.S.C. § 1981, and Oregon Revised Statute § 659A.030 when it (1) included the months of October 2005-January 2006 in his FY 2005 performance evaluation, (2) required him to correct errors in his work, (3) reviewed his work more slowly than the work of his peers, and (4) denied him TEPSIE training. Plaintiff also alleges Defendant

retaliated against him for filing a BOLI complaint and his prior federal court action by (1) assigning him to undesirable jobs such as moving files; (2) requiring him to obtain a doctor's release before allowing him to return to work in October 2006; (3) counseling him about his customer interaction on January 5, 2007; and (4) counseling Plaintiff about requesting assistance from Brown for access to the MDD.

On May 27, 2008, Defendant filed a Motion for Summary Judgment in which it sought summary judgment as to all of Plaintiff's claims.

On September 29, 2008, the Court issued an Opinion and Order in which it granted Defendant's Motion for Summary Judgment. On that same day, the Court entered a Judgment dismissing this matter with prejudice.

On October 9, 2008, Defendant filed a Bill of Costs.

STANDARDS

Absent a showing of circumstances not relevant here, an award of costs is generally governed by federal law. *See In re Merrill Lynch Relocation Mgt., Inc.*, 812 F.2d 1116, 1120 n.2 (9th Cir. 1987)(dictum). Accordingly, the Court applies federal law to the issue of awarding costs in this case.

28 U.S.C. § 1920 allows a federal court to tax specific items as costs against a losing party pursuant to Federal Rule of

Civil Procedure 54(d)(1). Section 1920 provides:

A judge or clerk of any court of the United States may tax as costs the following:

- (1) Fees of the clerk and marshal;
- (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and copies of papers necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of this title;
- (6) Compensation for court-appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under § 1828 of this title.

A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.

The court has broad discretion to allow or to disallow a prevailing party to recoup costs of litigation. The court, however, may not tax costs beyond those authorized by § 1920. *Frederick v. City of Portland*, 162 F.R.D. 139, 142 (D. Or. 1995).

DISCUSSION

Defendant seeks costs of \$1,760.50 comprised of fees for court reporters and photocopying charges. Defendant supports its request with the Declaration of Leah S. Freed and an itemized list of the transcripts ordered and the items photocopied.

Plaintiff objects to Defendant taxing him for the cost of the deposition transcript of Evelyn King.

I. Court reporter fees.

Defendant requests \$1,555.30 for court reporter fees incurred in obtaining the deposition transcript of Evelyn King.

Although Plaintiff asserts this deposition "furnished no helpful information for Tyco's summary judgment," Plaintiff attributed allegedly discriminatory conduct to King and cited to the deposition transcript of King in his Response to Defendant's Motion for Summary Judgment. Defendant contends, therefore, that a transcript of King's deposition was necessary to Defendant's preparation of its Reply.

On this record, the Court concludes Defendant properly obtained the transcript at issue and used it in its defense of this action. Accordingly, the Court grants Defendant's request for \$1,555.30 for court reporter fees.

II. This was not a complicated or close case.

Plaintiff also asserts the Court should not award Defendant costs because this was a complicated and close case. The Court disagrees. This case presented standard issues of employment law related to discrimination and retaliation. In fact, the Court concluded in its Opinion and Order that Plaintiff failed to establish even a *prima facie* case of discrimination or retaliation under Title VII, § 1981, or Oregon Revised Statute § 659A.030.

Accordingly, the Court declines to deny Defendant its costs on this basis.

III. Plaintiff's ability to pay costs.

Plaintiff also contends the Court should not require him to pay Defendant's costs because Plaintiff has lost all of his income and does not have the financial resources to pay the costs as a result of Plaintiff's "discharge" from Defendant's employment.

Defendant, however, contends Plaintiff voluntarily resigned his employment on April 23, 2008, and he was not discharged from his employment. Defendant also notes despite Plaintiff's assertion that he does not have the income to pay these costs, Plaintiff has not established he does not have any other resources to pay his costs in this matter.

Federal Rule of Civil Procedure 54(d)(1) "creates a presumption in favor of awarding costs to a prevailing party, but vests in the district court discretion to refuse to award costs." *Ass'n of Mexican-American Educators v. State of Cal.*, 231 F.3d 572, 591 (9th Cir. 2000). The Court's discretion, however, is not unlimited. A district court must specify appropriate reasons for a refusal to award costs. *Id.*

To overcome the presumption in favor of awarding costs to the prevailing party, the Court must make specific findings that the "case is not 'ordinary' and . . . it would be inappropriate

or inequitable to award costs." *Id.* at 593. Appropriate reasons for a district court to deny costs to a prevailing party include the losing party's limited financial resources and any chilling effect a high award of costs might have on future litigants. *Id.* at 592. The losing party has the burden to prove that costs should not be awarded based on the party's inability to pay. *Save Our Valley v. Sound Transit*, 335 F.3d 932, 945 (9th Cir. 2003).

The Court recognizes a cost of approximately \$1,700 can be a steep one for an unemployed individual, but Plaintiff has not adequately established that he does not have sufficient resources to pay Defendant's costs. In addition, the Court concludes the amount at issue here is not so great as to create a chilling effect on future litigants. Finally, this record does not include any basis for the Court to exercise its discretion to, in effect, penalize Defendant for Plaintiff's unemployed status.

Accordingly, the Court awards \$1,760.50 to Defendant as costs.

CONCLUSION

For these reasons, the Court awards costs to Defendant in

this action in the amount of **\$1,760.50**.

IT IS SO ORDERED.

DATED this 9th day of January, 2009.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge